EX PARTE OR LATE FILED ORIGINAL

allegiancetelecom,inc.

1919 M. Street, NW
Suite 420
Washington, D.C. 20036
202/464-1800 phone
202/464-0762 fax

Morton J. Posner
Regulatory Counsel
Direct Dial: (202) 464-1792
Morton.Posner@algx.com

July 30, 2002

RECEIVED

JUL 30 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

By Courier
Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
236 Massachusetts Avenue, NE
Suite 110
Washington, DC 20002

Ex Parte: **BellSouth Tariff Transmittal No. 657**
Verizon Tariff Transmittal No. 226
WC Docket No. 02-80
Verizon July 24, 2002 Petition for Emergency Declaratory and Other Relief

Dear Ms. Dortch:

On July 29, 2002, the attached letter from Royce J. Holland, Chairman and Chief Executive Officer of Allegiance Telecom, Inc., was delivered to Chairman Michael Powell.

Pursuant to Section 1.1206 of the Commission's Rules, two copies of this filing are submitted for inclusion in the public record for each of the above-referenced matters.

Also included is an extra copy. Please stamp the copy of reflect receipt and return it to me via my messenger.

If there are questions concerning this matter, please contact me.

Very truly yours,

Morton J. Posner

Enclosures

No. of Copies rec'd 0+1
List ABCDE

Royce J. Holland
Chairman & CEO

allegiancetelecom, inc.
9201 N. Central Expressway
6th Floor
Dallas, TX 75207
469/259-2105 phone
469/259-9107 fax
royce.holland@allegiancetelecom.com

July 29, 2002

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: BellSouth Transmittal No. 657
Verizon Tariff Transmittal 226
WC Docket No. 02-80
Verizon July 24, 2002 Petition for Emergency Declaratory and Other Relief

Dear Chairman Powell:

WorldCom's recent bankruptcy filing highlights the "nuclear winter" we have been suffering in the telecom sector over the last year-and-a-half. Like pigs to the trough, BellSouth, Verizon and USTA have come to the Commission seeking ILEC protection from what they consider to be "deadbeat" CLECs and IXCs. This protection would take the form of either a two-month security deposit, advance payments, or other forms of regulatory relief. What is lost in the debate, however, is that because *all* carriers are interconnected, *all* carriers are impacted when another carrier goes bankrupt.

Before addressing the specifics of the requests by the Bells, I would like to summarize my comments on the overarching issue raised in their requests. **The ability to impose and enforce the payment of security deposits on competitors in the hands of monopoly carriers, such as the RBOCs, can be extremely anticompetitive.** More specifically, BellSouth, as a dominant carrier, can impose a security deposit on Allegiance Telecom and enforce this measure by refusing to interconnect with Allegiance and provide access to essential facilities unless Allegiance "ponies up" the money. And in fact, BellSouth has held a significant sum of our cash hostage for several years despite good payment history by Allegiance. Conversely, if we try to impose and enforce a security deposit on BellSouth, we will essentially "make their day" because, absent interconnection and access to BellSouth's essential facilities, as the dominant carrier they can simply eliminate us as a competitor.

This latest attempt by the dominant carriers to try to levy security deposits on all carriers with less than investment-grade debt ratings is particularly disingenuous since, to my knowledge, no local competitor to the Bells has ever enjoyed an investment-grade rating due to the extended period required to achieve profitability as a non-dominant carrier. Of course, the dominant

carrier Bells have easily achieved investment grade status due to their almost 90-year legacy of government-protected monopoly cash flows.

Although I regard this latest attempt to bleed competitors as particularly unseemly, the thing that really galls me the most is that the dominant carrier Bells are the ones with the poor payment history. For example, Allegiance Telecom's Days Sales Outstanding (DSOs)[1] are approximately 60 days for our small and mid-sized business customers. But for intercarrier compensation charges to the Bells and AT&T, our DSOs balloon to approximately 180 days. **In other words, the beauty parlor and corner drugstore pay their bills on time, but the investment grade "Deadbeat Dominant Carriers" delay paying for many months by a combination of strategic incompetence, fabricated disputes, outright refusals, and other forms of civil disobedience.** And now they want to further drain working capital from competitors by imposing unilateral security deposits.

The current ILEC initiatives to protect themselves from financial loss are one-sided and heavy-handed in the extreme. Any businessman with commonsense would agree that the bellwether of the supplier-customer relationship must be a good payment history. Indeed, Allegiance's own FCC access tariff provides for a deposit in only two circumstances: no credit history or bad payment history. BellSouth's recent proposed deposit tariff revisions would require a two-month deposit triggered by a continuous and subjective creditworthiness review, without regard to good payment history. BellSouth would refund deposits only upon satisfaction of the same vague creditworthiness standard, even if prompt payment is made while the deposit is on account. Verizon further proposes to require advance payments or deposits when a carrier's senior debt securities drop below investment grade, again without regard to good payment history. Such a standard would exclude and penalize virtually every wireline carrier in the USA except Verizon, BellSouth, SBC, AT&T, and the independent ILECs.[2] In other words, Verizon's "investment grade" standard benefits only those privileged dominant carriers who did not earn their market shares and legacy cash flows in a competitive market environment, but did so after decades of government-protected monopolies.

Institution of a precipitous deposit requirement by the "Deadbeat Dominant Carriers" will only exacerbate the current industry turmoil by creating capital shock. As the Commission well knows, the capital markets are closed to competitive telecommunications carriers. Allegiance conservatively launched its business by pre-funding its initial 36 markets. That strategy has stood us in good stead. Changing the rules of the game at this time for a surviving carrier that is succeeding does not serve to promote competition. Simply put, Allegiance doubts that any competitor is in a position to hand over millions of unbudgeted dollars, in the form of onerous deposits or advance payments, to its primary competitors in this economy before services are even rendered.

I would now like to address a related issue which is another thinly veiled attempt by the Bells to leverage the "utter crisis" in the telecom industry to gain an unfair competitive edge. This issue involves self dealing between the wholesale and retail arms of the Bells to lock

[1] Days Sales Outstanding (DSOs) is the primary measure of a telecom carrier's accounts receivables and is the average time interval between the date of sale and the date of payment by customers. Most wireline carriers have DSOs in the 45 to 90 day range.

[2] Although Sprint's bonds are still rated investment grade, rumors abound that it may be downgraded as it seeks to renegotiate its credit facility. WSJ article 7/29/02.

competitors out from competing for the customers of a carrier facing liquidation. In summary, the Bells are attempting to bypass the bankruptcy process and force competitors to cure pre-bankruptcy petition defaults before acquiring the facilities and customers of carriers in liquidation. Exhibit A is BellSouth which resorted to this anti-competitive form of self-dealing in capturing most of the Network Plus customers when that CLEC went bankrupt and was liquidated. In addition, Verizon has now made two efforts to get a Commission ruling requiring carriers assuming the customer relationships of distressed carriers to cure those distressed carriers' pre-petition indebtedness or have their end users disconnected from the public switched network. Again, the relief would be regardless of whether the new carrier that has stepped in to serve these end users has a good payment history since commencing service.

A carrier that assumes the interconnection agreement of a bankrupt carrier may have to assume the pre-petition liabilities of the bankrupt carrier. On the other hand, if the purchasing carrier already has an existing interconnection arrangement with the ILEC, it should be able to assume the existing distressed CLEC's facilities, including leased UNEs, without having to assume the pre-petition debt. Not only does Verizon's proposal fly in the face of the bankruptcy court's protections for all creditors, but not surprisingly, it is also anticompetitive.

Since Verizon suggests that the only way a purchasing carrier can assume the customer without assuming the liability is to initiate new service to the customer, Verizon is imposing yet another barrier to migration of the customer to any other carrier except its own retail division. As Verizon recognizes, requiring new service initiation can and does lead to at least a brief disruption of service to the customer. Furthermore, Verizon and the other Bells do not have the capability (even if they had the motivation) to support mass migration of customers in a short time frame from one CLEC to another except using resale or UNE-P. Since Verizon's retail division could assume a large number of customers and facilities from a distressed CLEC in a short period from Verizon's wholesale division without any service disruption, Verizon's self-dealing proposal to the FCC gives our competitor (Verizon's retail division) a huge advantage over Allegiance in migrating these customers and avoiding service affecting outages.

A better solution to providing distressed customers with both a choice and a seamless migration to a new carrier would be to treat all carriers as equals. **I suggest that CLECs and ILECs have an equal opportunity to compete for and obtain distressed CLEC customers and the facilities (including leased UNEs) used by the distressed CLEC to serve them by ensuring that the migration process is as seamless for the competing CLEC as for the ILEC's retail division.** For example, the Commission should insist that the ILECs provide the competing carrier with all information that is available to the ILEC's retail division so that the CLEC has a fair and equal opportunity to provision and bill service in a timely fashion. Moreover, the competing CLEC should be able to assume the customer and the distressed CLEC's facilities used to serve them, including leased UNEs, without having to assume the distressed CLEC's pre-petition debt unless the competing CLEC also assumes the distressed CLEC's interconnection agreement.

To the extent that the Commission is inclined to implement measures to protect the financial interests of all carriers providing services to other carriers, I recommend the following:

1. All carriers should be treated equally with regard to security deposits and advance payments. No advance payment or deposit should be required for established customers

with a good payment history for undisputed amounts. The Commission should reject Verizon's proposals that a drop in rating of a carrier's senior debt be used as a measure of creditworthiness and that deposits be required of all non-investment grade carriers.

2. Deposits must be refunded promptly, with interest, once good payment history is established or reestablished. Similarly, any advance payment scheme should be discontinued with a good payment history. The Commission should order BellSouth to comply with this and refund CLEC deposits long held hostage.

3. The Commission should support all carriers' efforts in bankruptcy courts, not only those of the ILECs, to obtain adequate assurance of payment for service rendered to carrier-customers in bankruptcy. Commission-approved protections for financial loss should be equally available to CLECs and ILECs.

4. All competitors should have an equal opportunity to compete for and obtain distressed CLEC customers and the facilities (including leased UNEs) used by the distressed CLEC to serve them by ensuring that the migration process is as seamless for the competing CLEC as for the ILEC's retail division. The Commission should stop illegal self-dealing between the wholesale and retail divisions of the Bells.

The Supreme Court recently reaffirmed the Act's central principle – that incumbents and competitors need to be placed on an equal footing. Recent ILEC initiatives to protect themselves from financial loss would unacceptably tilt that balance. Whatever action the Commission takes should put CLECs in an equal position to ensure regular and prompt payment from their ILEC customers for the use of the CLECs' networks and also prevent ILEC self-dealing to inhibit competitors from competing for customers of a distressed CLEC.

Very truly yours,

Royce J. Holland

cc: The Honorable Kathleen Abernathy
The Honorable Michael Copps
The Honorable Kevin Martin